

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ALEX CICCOTELLI,)	
)	
Plaintiff,)	
)	Case No. _____
v.)	
)	JURY TRIAL DEMANDED
CYRUSONE INC., LYNN A.)	
WENTWORTH, ALEX SHUMATE, DAVID)	
FERDMAN, JOHN W. GAMBLE JR., T.)	
TOD NIELSEN, DENISE OLSEN, and)	
WILLIAM E. SULLIVAN,)	
)	
Defendants.)	

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action stems from a proposed transaction announced on November 15, 2021 (the “Proposed Transaction”), pursuant to which CyrusOne Inc. (“CyrusOne” or the “Company”) will be acquired by Cavalry Parent L.P. (“Parent”) and Cavalry Merger Sub LLC (“Merger Sub”).

2. On November 14, 2021, CyrusOne’s Board of Directors (the “Board” or “Individual Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger Agreement”) with Parent and Merger Sub. Pursuant to the terms of the Merger Agreement, CyrusOne’s stockholders will receive \$90.50 in cash for each share of CyrusOne common stock they own.

3. On December 30, 2021, defendants filed a proxy statement (the “Proxy Statement”) with the United States Securities and Exchange Commission (the “SEC”) in connection with the Proposed Transaction.

4. The Proxy Statement omits material information with respect to the Proposed Transaction, which renders the Proxy Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “1934 Act”) in connection with the Proxy Statement.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper under 28 U.S.C. § 1391(b) because a portion of the transactions and wrongs complained of herein occurred in this District.

PARTIES

8. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of CyrusOne common stock.

9. Defendant CyrusOne is a Maryland corporation and a party to the Merger Agreement. CyrusOne’s common stock is traded on the NASDAQ, which is headquartered in New York, New York, under the ticker symbol “CONE.”

10. Defendant Lynn A. Wentworth is Chairman of the Board of the Company.
11. Defendant Alex Shumate is a director of the Company.
12. Defendant David Ferdman is a director of the Company.
13. Defendant John W. Gamble Jr. is a director of the Company.
14. Defendant T. Tod Nielson is a director of the Company.
15. Defendant Denise Olsen is a director of the Company.
16. Defendant William E. Sullivan is a director of the Company.
17. The defendants identified in paragraphs 10 through 16 are collectively referred to herein as the “Individual Defendants.”

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

18. CyrusOne is a premier global REIT specializing in design, construction, and operation of more than fifty high-performance data centers worldwide.

19. CyrusOne offers colocation, hyperscale, and build-to-suit environments that help customers enhance the strategic connection of their essential data infrastructure and support achievement of sustainability goals.

20. On November 14, 2021, CyrusOne’s Board caused the Company to enter into the Merger Agreement.

21. Pursuant to the terms of the Merger Agreement, CyrusOne’s stockholders will receive \$90.50 in cash per share.

22. According to the press release announcing the Proposed Transaction:

CyrusOne Inc. (NASDAQ: CONE) (the “Company” or “CyrusOne”), a premier global data center REIT, KKR, a leading global investment firm, and Global Infrastructure Partners (“GIP”), one of the world’s leading infrastructure investors, today announced a definitive agreement pursuant to which KKR and GIP will

acquire all outstanding shares of common stock of CyrusOne for \$90.50 per share in an all-cash transaction valued at approximately \$15 billion, including the assumption of debt.

The \$90.50 per share purchase price reflects a premium of approximately 25% to CyrusOne's unaffected closing stock price on September 27, 2021, the last full trading day prior to published market speculation regarding a potential sale of the Company. . . .

Transaction Approvals and Timing

The transaction, which was unanimously approved by the CyrusOne Board of Directors, is not subject to a financing condition and is expected to close in the second quarter of 2022, subject to satisfaction of customary closing conditions, including regulatory approvals and approval by CyrusOne stockholders.

Upon completion of the transaction, CyrusOne will be a privately held company wholly owned by KKR and GIP and CyrusOne's common stock will no longer be listed on any public market. KKR's investment is being made primarily from its global infrastructure and real estate equity strategies, and GIP's investment is being made from its global infrastructure funds.

Advisors

Morgan Stanley & Co. LLC and DH Capital, LLC are acting as financial advisors to CyrusOne and Cravath, Swaine & Moore LLP, Venable LLP and Eversheds Sutherland (International) LLP are acting as its legal counsel.

Goldman Sachs & Co., Barclays, Wells Fargo Securities, LLC, Citigroup and J.P. Morgan are acting as financial advisors to KKR and GIP, with KKR Capital Markets leading the structuring on the financing. Kirkland & Ellis LLP and Dentons (UK & Europe) are acting as legal counsel to the acquiring consortium and KKR, and Paul, Weiss, Rifkind, Wharton & Garrison LLP is acting as legal counsel to GIP.

The Proxy Statement Omits Material Information, Rendering It False and Misleading

23. Defendants filed the Proxy Statement with the SEC in connection with the Proposed Transaction.

24. As set forth below, the Proxy Statement omits material information.

25. First, the Proxy Statement omits material information regarding the Company's financial projections.

26. With respect to the Company's financial projections, the Proxy Statement fails to disclose: (i) all line items used to calculate the financial projections; and (ii) a reconciliation of all non-GAAP to GAAP metrics.

27. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion.

28. Second, the Proxy Statement omits material information regarding the analyses performed by the Company's financial advisor, Morgan Stanley & Co. LLC ("Morgan Stanley").

29. With respect to Morgan Stanley's Discounted Cash Flow Analysis, the Proxy Statement fails to disclose: (i) the terminal values for the Company; (ii) the individual inputs and assumptions underlying the discount rates; and (iii) Morgan Stanley's basis for selecting the multiples used in the analysis.

30. With respect to Morgan Stanley's Analysts' Price Targets Analysis, the Proxy Statement fails to disclose: (i) the price targets observed in the analysis; and (ii) the sources thereof.

31. With respect to Morgan Stanley's Comparative Public Trading Multiples Analysis, the Proxy Statement fails to disclose the individual multiples and metrics for the companies.

32. With respect to Morgan Stanley's Precedent Transaction Analysis, the Proxy Statement fails to disclose the individual multiples and metrics for the transactions.

33. With respect to Morgan Stanley's Precedent Premiums Paid Analysis, the Proxy Statement fails to disclose the premiums paid in the transactions.

34. When a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

35. Third, the Proxy Statement omits material information regarding the Company's bankers' engagements.

36. The Proxy Statement fails to disclose the timing and nature of the past services Morgan Stanley provided for the parties to the Merger Agreement and their affiliates, and the amount of compensation Morgan Stanley received for providing the services.

37. The Proxy Statement also fails to disclose the terms of DH Capital, LLC's ("DH") engagement, including: (i) the amount of compensation DH has received or will receive in connection with its engagement; (ii) the amount of DH's compensation that is contingent upon the consummation of the Proposed Transaction; (iii) whether DH has performed past services for any parties to the Merger Agreement or their affiliates; (iv) the timing and nature of such services; and (v) the amount of compensation received by DH for providing such services.

38. Fourth, the Proxy Statement fails to disclose whether the Company entered into any nondisclosure agreements that contained standstill and/or "don't ask, don't waive" provisions.

39. The omission of the above-referenced material information renders the Proxy Statement false and misleading.

40. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's stockholders.

COUNT I

Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and CyrusOne

41. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

42. The Individual Defendants disseminated the false and misleading Proxy Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. CyrusOne is liable as the issuer of these statements.

43. The Proxy Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Proxy Statement.

44. The Individual Defendants were at least negligent in filing the Proxy Statement with these materially false and misleading statements.

45. The omissions and false and misleading statements in the Proxy Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Proxy Statement and in other information reasonably available to stockholders.

46. The Proxy Statement is an essential link in causing plaintiff to approve the Proposed Transaction.

47. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and Rule 14a-9 promulgated thereunder.

48. Because of the false and misleading statements in the Proxy Statement, plaintiff is threatened with irreparable harm.

COUNT II

Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants

49. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

50. The Individual Defendants acted as controlling persons of CyrusOne within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of CyrusOne and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Proxy Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

51. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

52. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Proxy Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in the making of the Proxy Statement.

53. By virtue of the foregoing, the Individual Defendants violated Section 20(a) of the 1934 Act.

54. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934 Act. As a direct and proximate result of defendants' conduct, plaintiff is threatened with irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment and relief as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;

C. Directing the Individual Defendants to disseminate a Proxy Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder;

E. Awarding plaintiff the costs of this action, including reasonable allowance for plaintiff's attorneys' and experts' fees; and

F. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury on all issues so triable.

Dated: January 6, 2022

RIGRODSKY LAW, P.A.

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